



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0214; FRL-10006-31-Region 4]

Air Plan Approval; Alabama: Revisions to Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Alabama State Implementation Plan (SIP), submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), via two letters dated August 27, 2018, and October 25, 2018. The SIP revisions make technical amendments to the State's Cross-State Air Pollution Rule (CSAPR) regulations. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2019-0214. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory

Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9034. Mr. Scofield can also be reached via electronic mail at scofield.steve@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 26, 2019 (84 FR 65061), EPA proposed to approve changes to the Alabama SIP that were provided to EPA through two letters dated August 27, 2018, and October 25, 2018.¹ Specifically, EPA proposed to approve two SIP revisions that include changes to Alabama's CSAPR regulations, found in ADEM Administrative Code Rules 335-3-5-.13, 335-3-8-.14, 335-3-8-.40, and 335-3-8-.46.²

Alabama's August 27, 2018, SIP revision makes changes to ADEM's CSAPR regulations by adding the term "Group 2" in several places to Rule 335-3-8-.40 to make the terminology consistent with EPA's CSAPR NOx Ozone Season Group 2 Trading Program regulations.

¹ EPA received ADEM's submissions on September 7, 2018 and October 30, 2018, respectively.

² EPA notes that the Agency received other revisions to the Alabama SIP submitted with the August 27, 2018, letter. EPA will consider action on the remaining revisions in separate actions.

Alabama's October 25, 2018, SIP revision changes the CSAPR regulations in Rules 335-3-5-.13, 335-3-8-.14, and 335-3-8-.46 by explicitly addressing the disposition of any allowances that remain after allocations to all existing units have reached their historical emission caps as well as any allowances set aside for new units in Indian country within the State and not used for that purpose. In addition, the October 25, 2018, SIP revision makes minor and administrative changes, such as correcting typographical errors.

The details of the Alabama submission and the rationale for EPA's action are explained in the notice of proposed rulemaking. Comments on the proposed rulemaking were due on or before December 26, 2019. EPA received one adverse comment on the proposed action.

II. Response to Comments

EPA received one adverse comment from an anonymous commenter on the proposed rule published on November 26, 2019. *See* 84 FR 65061. This comment has been included in the docket for this action.

Comment: The Commenter asserts that CSAPR has been vacated by the recent rulings in *Wisconsin v. EPA* and *New York v. EPA* and states that EPA is therefore precluded from approving Alabama's requested changes because the State's program is based on an illegal federal plan. The Commenter makes several additional statements that are outside the scope of this action, including references to *Aloha Power v. EPA*.

Response: EPA disagrees with this comment. In *Wisconsin v. EPA*, the court remanded the CSAPR Update to EPA but did not vacate it, and the remand does not concern any aspect of the CSAPR Update rulemaking relevant to the minor SIP changes at issue in this action. 938 F.3d 303, 336 (D.C. Cir. 2019). In *New York v. EPA*, the court vacated a related action known as

the CSAPR Close-out, but the vacatur does not extend to CSAPR or the CSAPR Update. 781 Fed. Appx. 4 (D.C. Cir. 2019). Thus, the Wisconsin and New York decisions do not bar approval of the requested changes to Alabama's SIP.

With respect to the commenter's discussion on endangerment findings, the comment is out of scope of this action, as EPA's action did not relate to an endangerment finding. Further, to the extent the Commenter intended to raise concerns other than those related to endangerment findings in its discussion of a possible U.S. Supreme Court decision named *Aloha Power v. EPA*, the commenter did not provide a citation and EPA is unable to find such a decision based on the description provided by the Commenter.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of ADEM Administrative Code Rules 335-3-5-.13, 335-3-8-.14, and 335-3-8-.46, state effective on December 7, 2018, and 335-3-8-.40, state effective on October 5, 2018, which make the following revisions to Alabama's SIP: add the term "Group 2" to the State's rules, consistent with EPA's CSAPR NO_x Ozone Season Group 2 Trading Program regulations; address the disposition of any allowances that remain after allocations to all existing units have reached their historical emission caps as well as any allowances set aside for new CSAPR NO_x Ozone Season Group 2 units in Indian country within Alabama and not used for that purpose; and make other minor changes. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more

information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.³

IV. Final Action

EPA is approving the aforementioned changes to ADEM Administrative Code Rules 335-3-5-.13, 335-3-8-.14, 335-3-8-.40, and 335-3-8-.46. These changes are consistent with the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;

³ *See* 62 FR 27968 (May 22, 1997).

- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. These actions are not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 27, 2020.

Mary S. Walker,
Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B - Alabama

2. In § 52.50 amend the table in paragraph (c) by revising the entries for “335-3-5-.13, TR SO₂ Allowance Allocations”, “335-3-8-.14, TR NO_x Annual Allowance Allocations”, “335-3-8-.40, TR NO_x Ozone Season Group 2 Trading Program—Applicability”, and “335-3-8-.46, TR NO_x Ozone Season Group 2 Allowance Allocations” to read as follows:

§52.50 Identification of plan.

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(c) * * *

EPA-Approved Alabama Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
335-3-5-.13	TR SO ₂ Allowance Allocations	12/7/2018	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Both sections of 335-3-5-.13 are included in the approved SIP.
**	**	*	*	*
335-3-8-.14	TR NO _x Annual Allowance Allocations	12/7/2018	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	Both sections of 335-3-8-.14 are included in the approved SIP.

**	**	*	*	*
335-3-8-.40	TR NOx Ozone Season Group 2 Trading Program— Applicability	10/5/2018	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
**	**	*	*	*
335-3-8-.46	TR NOx Ozone Season Group 2 Allowance Allocations	12/7/2018	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	
**	**	*	*	*

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[FR Doc. 2020-04854 Filed: 3/11/2020 8:45 am; Publication Date: 3/12/2020]